IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2974 OF 2006

Rameshwar Laxmandas Agarwal ..Petitioner.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr. D.B. Sawant for the Petitioner.
Mr. K.R. Belosey, AGP for the State.

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CORAM: DR. D.Y. CHANDRACHUD, J.

6th December, 2006.

P.C. :

1. Rule, made returnable forthwith. Learned AGP appearing for the Respondents waives service. By consent of the learned counsel taken up for hearing and final disposal.

2. The Petitioner has been carrying on business and conducts a restaurant by the name of Swagat Restaurant at 76-78 Mala Building, Jacob Circle, Mumbai. The business was being conducted by the Petitioner together with his three sons Bholaprasad, Chetan and Subhash. An FL-III licence was issued to the Petitioner under the Bombay Prohibition Act, 1949 and

Bombay Foreign Liquor Rules, 1953. The licence stood in the name of the Petitioner and his three sons. One of the three sons Subhash died on 7th January, 2002. The Petitioner thereupon applied to the Third Respondent for deleting the name of his deceased son and for adding the name of another son Ritesh. The Petitioner was called upon by a communication dated 14th February, 2003 to pay privilege fees quantified at Rs.88,550/-. Another order was passed on 9th August, 2005. The appeal came to be remanded back to the Third Respondent for passing a speaking order on the basis of a government notification dated 18th June, 2004. Upon remand, the Third Respondent passed an order on 10th February, 2006 confirming his earlier order. The order dated 10th February, 2006 was challenged in appeal which was dismissed by the appellate authority on 10th March, 2006.

3. The Petitioner has submitted that the deletion of the name of his deceased son and the transposition of the name of his son, Ritesh in place of the deceased licensee is not a transfer as contemplated by Rule 5 of the Bombay Prohibition (Privilege Fees) Rules, 1954. Both before the Third Respondent and before the appellate authority, the Petitioner had relied upon the judgment of

this Court in **Sylvia Leo Carvalho v. The Collector of Mumbai**[1], wherein it was held as follows :

> "The Rule 5 applies to the voluntary transfer of the licence from one person to the other and cannot be made applicable to the transposition of the name of the legal representative or the heir of the deceased licensee. When the original Licensee or one of the joint licensee dies and in his or her place, the legal representatives or heir prays for insertion of his or her name in place of deceased licensee, such transposition of name or insertion of name in the licence on the death of the deceased licensee, this cannot be said to be a transfer of licence strictly speaking and, therefore, would not be covered under Rule 5 of the Bombay Prohibition (Privilege Fees) Rules, 1954, Rule 5 cannot be extended nor can be applied to a case where the licensee has expired and in his place his heir or legal representative is to be transposed."

The judgment was followed in a decision of the Aurangabad Bench dated 27th January, 2003 in Writ Petition 3171 of 2002 (Suchitra Yuvraj Avhad v. State of Maharashtra).

4. By a notification dated 4th October, 1996 the provisions of Rule 5 of the Bombay Prohibition (Privilege Fees) Rules, 1954 came to be amended and as amended the provision is as follows :

1 2000 (2) ALL MR 4.

> "5. Fees for transfer of a licence from one name to another – The fee payable by any licensee for the privilege of having the transfer of his licence from one name to another shall be the same as the fee chargeable for the grant or renewal or continuance of the licence, whichever is higher.
>
> Provided that, the provisions of this rule shall not apply to cases regarding transfer of licensees due to admission or withdrawal of partner or partners in F. L. I and F. L. II licences granted under the Bombay Foreign Liquor Rules, 1953 and C. L. II and C. L. III licences granted under the Maharashtra Country Liquor Rules, 1973."

Subsequently by a notification dated 18th June, 2004 a further proviso came to be added to the following effect :

> "Provided further that no fee shall be chargeable for transfer of a licence in the name of the heir or heirs or the deceased licensee."

5. The Petitioner relied upon the aforesaid provisions in an appeal against the decision of the Second Respondent. The revision was, however, dismissed by the State Government on 31st October, 2006.

6. The revisional authority has held that the government notification dated 18th June, 2004 will not govern the case of the Petitioner on the ground that the matter is of the year 2003. The

approach of the authority is ex facie erroneous. The case which related to the Petitioner had not attained finality and there is no reason why the Petitioner should not be given the benefit of the notification dated 18th June, 2004. Even otherwise de hors the said notification the case of the Petitioner was squarely governed by the decision in **Sylvia Leo Carvalho**'s case. In the circumstances, the Petitioner is entitled to succeed. The demand made by the authorities on the Petitioner in the sum of Rs.88,550/- is patently unlawful. Rule is made absolute in terms of prayer clause (a). However, in the facts and circumstances of the case, there shall be no order as to costs.